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Working Group on Arbitrary Detention

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No. 47/2014 (Yemen)

Communication addressed to the Government on 19 August 2014

concerning Nadeer Saleh Mohseen Saleh al-Yafei

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, by accession on 9 February 1987.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. Nadeer Saleh Mohseen Saleh al-Yafei, born in 1992, worked as a postal worker in Yemen. He is married and has two children. He is reportedly an activist of the South Yemen National Movement, which is demanding the secession of southern Yemen from the Republic of Yemen.

5. On 1 August 2013, Mr. Al-Yafei was arrested by security forces at a checkpoint in the city of Huta, Lahij Governorate, while he was accompanied by two friends. They were all allegedly severely assaulted and taken to the National Security Prison in Khormaksar, Aden Governate, where they were detained. On 2 August 2013, the two friends were released, but Mr. Al-Yafei was transferred to the National Security Prison in Sana'a.

6. The source informs the Working Group that Mr. Al-Yafei's parents received information from his two friends that he was detained by the National Security Services. The family contacted the local authorities, including the offices of the National Security Services, to enquire about Mr. Al-Yafei's well-being and whereabouts. Reportedly, the officials refused to provide any answers to the family for approximately six months.

7. According to information received, on 14 August 2013, two weeks following his arrest, the Saudi newspaper, "Al-Madinah", published an article with the headline: "Arrest of one of the abductors of Saudi Vice-Consul Al-Khalidi", referring to Mr. Al-Yafei. The newspaper article explained that Mr. Al-Yafei was arrested in the context of a large campaign of arrests following the abduction in Aden on 28 March 2012 of Saudi Deputy Consul in southern Yemen, Abdallah al-Khalidi, by a group linked to Al-Qaida. The article, reportedly quoting the Yemeni authorities, described Mr. Al-Yafei as the most dangerous element of the group. The family contests the accusations against Mr. Al-Yafei and affirms that he was arrested as a result of his activities in the South Yemen National Movement. The source affirms that, despite the emergence of this information concerning Mr. Al-Yafei, the National Security Services continued to deny that he was in detention for weeks thereafter.

8. It is reported that, on 10 and 16 December 2013, following the transmission of various letters by the family to the authorities, the regional representative of Lahij Governorate, Ahmed Abdallah al-Majidi, wrote to the Director of the Political Security Services and to the head of the National Security Forces in Sana'a, requesting permission for Mr. Al-Yafei to receive visits from his parents and his wife. The source reports that, in

late January 2014, approximately six months after his arrest, Mr. Al-Yafei obtained permission to telephone his family from the National Security Prison.

9. At that time, Mr. Al-Yafei informed his family that he had not been informed of the reasons for his detention and had not been brought before any judicial authority since his arrest; he has been detained incommunicado in the Central Prison in Sana'a without being allowed to contact anyone, including a lawyer; and that he had been subject to abuse and physical violence at the time of his arrest and during the period of his detention, including being assaulted with rifle butts and burnt with cigarettes on different parts of his body.

10. The source reports that since the last contact with his family, Mr. Al-Yafei has continued to be detained incommunicado. The source emphasizes that he has now been deprived of his liberty for approximately one year, during which time he was allowed to speak with his family only once, for a few minutes. His family is reportedly still not allowed to visit or contact him.

11. The source submits that the deprivation of Mr. Al-Yafei's liberty is arbitrary and falls under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. It states that he has been deprived of his liberty without any legal basis from the time of his arrest and remains detained to date. Mr. Al-Yafei was arrested without a warrant and has not been informed of the charges against him. He has been denied the possibility of challenging the legality of his detention before a judicial authority. He has not been subjected to any regular criminal procedure to date and, as a consequence, he is not aware of the charges justifying the deprivation of his liberty. According to the source, that infringes articles 32 (b) and 32 (c) of the Constitution of Yemen and is also contrary to article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

12. The source submits that the deprivation of Mr. Al-Yafei's liberty also falls under category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. It alleges that no evidence or charges have been presented to confirm that Mr. Al-Yafei was involved in abduction of the Saudi diplomat. However, it affirms that Mr. Al-Yafei is an activist of the South Yemen National Movement and claims that his arrest and detention is not an isolated case, as dozens of members of the South Yemen National Movement have been arrested and detained by the National Security Forces under the same circumstances and without charge or trial. The source alleges that Mr. Al-Yafei was arrested and detained on the basis of his political activism, which, in its view, constitutes a violation of the right to freedom of opinion and expression and the right to freedom of peaceful assembly guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights.

13. The source further submits that the deprivation of Mr. Al-Yafei liberty falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, as his right to a fair trial has been denied, in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. In particular, the incommunicado detention of Mr. Al-Yafei for six months as well as his ongoing detention without a trial violate his right to be brought promptly before a judicial authority. Furthermore, Mr. Al-Yafei has not been informed of the charges against him nor allowed to contact legal counsel and he is being held incommunicado without being able to receive visits or communicate with his relatives.

Response from the Government

14. On 19 August 2014, the Working Group transmitted the allegations of the source to the Government of Yemen, requesting it to provide the Working Group with detailed information about the current situation of Nadeer Saleh Mohseen Saleh al-Yafei and to clarify the legal provisions justifying his continued detention and their compliance with international law. The Government has not responded to the allegations transmitted to it.

15. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its Opinion on the detention of Mr. Al Yafei in conformity with paragraph 16 of its Revised methods of work.

Discussion

16. As the Government has not rebutted the prima facia reliable information submitted by the source, the Working Group accepts the information of the source as reliable.

17. The Working Group recalls that, in previous similar cases concerning Yemen, it found that individuals were arrested without a warrant, detained for years without any criminal charges, without legal assistance and without a trial before a court of law.[1]

18. In the case under consideration, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, Mr. Al-Yafei, was arrested without a warrant in August 2013 and detained incommunicado without access to any legal assistance nor any information on the reasons for his detention nor of the legal basis justifying his deprivation of liberty. Since his arrest, more than one year ago, he has not been brought before a judicial authority. Under article 9, paragraph 3, of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly[2] before a judicial authority and shall be entitled to trial within a reasonable time or to release. Pursuant to article 9, paragraph 4, of the Covenant, a detainee shall have the right to challenge the lawfulness of his detention before a court and to be released if the court finds the detention unlawful. Under article 14, paragraph 3 (b), of the Covenant, in any criminal case, everyone shall have the right to communicate with counsel of his own choosing.

19. The Working Group considers that, in the present case, the non-observance of the international norms relating to the right to a fair trial, established in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is of such gravity as to give the deprivation of Mr. Al-Yafei's liberty an arbitrary character.

20. Thus, the deprivation of Mr. Al-Yafei's liberty falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

21. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> The deprivation of liberty of Nadeer Saleh Mohseen Saleh al-Yafei is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human

[1] See, in that respect, communications No. 19/2012 (Yemen), opinion adopted on 27 August 2012; and No. 17/2010 (Yemen), opinion adopted on 31 August 2010.

[2] The Human Rights Committee, in its general comment No 8 (1982) on article 9 (Right to liberty and security of the person), considers that "promptly" means within a few days (para. 2).

Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

22. Consequent upon the opinion rendered, the Working Group requests the Government of Yemen to take the necessary steps to remedy the situation of Nadeer Saleh Mohseen Saleh al-Yafei and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

23. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Nadeer Saleh Mohseen Saleh al-Yafei and to accord him an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

24. In accordance with paragraph 33 (a) of its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group considers it appropriate to refer the allegations of torture and ill-treatment of Mr. Al-Yafei to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 19 November 2014]